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In re Application of  
John Franklin Hayhurst  
Application No. 10/713,458  
Filed: November 14, 2003  
Attorney Docket No. 7380

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ON PETITION

This is a decision on the petition under 37 CFR 1.181 filed on July 14, 2005, to withdraw the holding of abandonment in the above-cited application.

The petition is **DISMISSED**.

The above-identified application became abandoned for failure to reply to the non-final Office action mailed October 13, 2004, which set a shortened statutory period for reply of three-months from its mailing date. No response was received within the allowable period, and the application became abandoned on January 14, 2005. A Notice of Abandonment was mailed on May 24, 2005.

Petitioner argues that a reply the non-final Office action was mailed on February 13, 2005, and received by the Office. As evidence of the same, petitioner provides a copy of an Office date-stamp postcard acknowledging receipt of an amendment and request for an extension of time within the first month. The postcard is date-stamped February 16, 2005.

The evidence petitioner provides establishes that an amendment and request for extension of time within the first month were received by the Office, but the evidence does not establish that the amendment was timely received so as to merit withdrawal of the holding of abandonment. In order for the amendment to be considered timely under the facts presented, the amendment would either have to have been received by midnight on February 14, 2005 (as evidenced by an Office date-stamped postcard), or the amendment must contain a certificate of mailing under 37 CFR 1.8 dated prior to, or on, February 14, 2005. No certificate of mailing under 37 CFR 1.8 was found on the amendment papers. The evidence presented does not allow the undersigned to conclude that the amendment was timely received, only that the amendment was received. Petitioner must, however, establish that the amendment was timely received in order to merit withdrawal of the holding of abandonment.

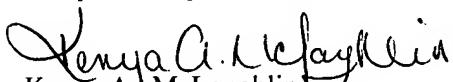
Based on the aforementioned, the petition under 37 CFR 1.181 to withdraw the holding of abandonment is dismissed.

Further correspondence with respect to this matter should be addressed as follows:

By mail:                   Commissioner for Patents  
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Telephone inquiries regarding this decision should be directed to the undersigned (571) 272-3222.



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